No. 11-88

In the Supreme Court of the United States

ASID MOHAMAD, INDIVIDUALLY AND FOR THE ESTATE OF AZZAM RAHIM, DECEASED, ET AL., PETITIONERS

v.

PALESTINIAN AUTHORITY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING AFFIRMANCE

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QUESTION PRESENTED

Whether the Torture Victim Protection Act of 1991, 28 U.S.C. 1350 note, which establishes a right of action against "[a]n individual" for certain acts of torture or extrajudicial killing, permits actions against defendants that are not natural persons.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases—Continued: Page

Cases—Continued: Page

Treaty and statutes:

Statutes—Continued: Page

Statutes—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

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INTEREST OF THE UNITED STATES

This case presents the question whether the Torture Victim Protection Act of 1991 (TVPA), Pub. L. No. 102-256, 106 Stat. 73 (1992) (28 U.S.C. 1350 note), permits civil actions against defendants that are not natural persons. Because the TVPA creates a cause of action for torture or extrajudicial killing under color of foreign law, it has significant implications for the United States' foreign relations, including its strong interest in promoting the protection of human rights. The United States has also filed an amicus brief in *Kiobel* v. *Royal Dutch Petroleum Co.*, No. 10-1491, which is to be argued in tandem with this case.

STATUTORY PROVISIONS INVOLVED

The TVPA and other relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. Before the TVPA was enacted in 1992, no federal statute provided a civil right of action for a U.S. citizen who was the victim of torture or extrajudicial killing that occurred outside the United States. It was also unclear whether aliens could bring such claims under the Alien Tort Statute (ATS), 28 U.S.C. 1350, which provides for jurisdiction over a suit "by an alien for a tort only, committed in violation of the law of nations." In *Filartiga* v. *Pena-Irala*, 630 F.2d 876 (1980), the Second Circuit had held that jurisdiction could be exercised under the ATS over a suit by Paraguayan citizens alleging torture by a Paraguayan official. In *Tel-Oren* v. *Libyan Arab Republic*, 726 F.2d 774 (1984), cert. denied, 470 U.S. 1003 (1985), however, the D.C. Circuit had affirmed, without controlling opinion, the dismissal of ATS claims filed by Israeli citizens against, *inter alia*, the Palestine Liberation Organization (PLO) for a terrorist attack on a civilian bus in Israel. Judge Edwards concluded that torture by non-state actors was not covered by the ATS, *id.* at 791-795, while Judge Bork found that there was no express private cause of action for claims of torture under the ATS or international law, *id.* at 798-823.

To address concerns about a cause of action and remedies for U.S. citizens, the TVPA establishes liability for certain claims of torture or extrajudicial killing. It provides in relevant part as follows:

> An individual who, under actual or apparent authority, or color of law, of any foreign nation—
>
> (1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or
>
> (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

TVPA § 2(a) (28 U.S.C. 1350 note) (hereinafter cited without references to the U.S. Code).

The TVPA differs from the older, less-detailed ATS in several ways in addition to its focus on torture and extrajudicial killing. Unlike the ATS, it does not limit the class of plaintiffs to aliens. The TVPA also contains two procedural restrictions that the text of the ATS itself does not: a ten-year statute of limitations, and a requirement that a plaintiff first "exhaust[] adequate and available remedies in the place in which the conduct giving rise to the claim occurred." TVPA § 2(b)-(c). And, of principal importance here, the TVPA specifies who may be liable. Although the version of the TVPA that was initially introduced would have applied to a "person" who committed torture or extrajudicial killing, the text was amended in a markup session of the House Committee on Foreign Affairs to specify that liability is imposed on an "individual." H.R. Rep. No. 693, 100th Cong., 2d Sess. Pt. 1, at 1 (1988); *The Torture Victim Protection Act: Hearing and Markup Before the H. Comm. on Foreign Affairs and Its Subcomm. on Human Rights and Int'l Orgs.*, 100th Cong., 2d Sess. 82, 87-88 (1988) (*House Hearing*). That change was made at the request of one

of the bill's three original sponsors (Rep. Leach), who wanted "to make it clear we are applying it to individuals and not to corporations." *Id.* at 81, 87. The House Judiciary Committee—to which the bill was also referred—made similar amendments. See *id.* at 88 n.1, 111. Congress ultimately enacted the House version, using "individual" rather than "person."

2. Petitioners are the widow and sons of Azzam Rahim, a Palestinian born in the West Bank who became a naturalized United States citizen after moving here in the 1970s. Pet. App. 2a-3a. They allege that when Rahim was visiting the West Bank in 1995, Palestinian intelligence officials arrested him and took him to Jericho, where he was imprisoned, tortured, and ultimately killed on September 29, 1995. *Id.* at 3a.[1] On September 27, 2005, petitioners brought this suit against three high-ranking Palestinian officials and against respondents, the Palestinian Authority and the PLO. Petitioners asserted claims of torture and extrajudicial killing under the ATS, the TVPA, and federal common law. *Id.* at 16a & n.1, 19a.

3. The district court granted respondents' motion to dismiss, Pet. App. 14a-21a, holding, as relevant here, that the TVPA's authorization for suit against an "individual" includes "only human beings, and does not encompass [respondents]." *Id.* at 17a.

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[1] The State Department later reported that Rahim "died in the custody of [Palestinian Authority] intelligence officers in Jericho" and that "[t]hree intelligence officers were sentenced for their role in the case," two of them for one year and one for seven years. U.S. Dep't of State, *Country Reports on Human Rights Practices for 1995*, J. Comm. Print of H. Comm. on Int'l Relations and S. Comm. on Foreign Relations, 104th Cong., 2d Sess. 1183-1184 (Apr. 1996).

4. The court of appeals affirmed. Pet. App. 1a-13a. With respect to petitioners' TVPA claim, it concluded that, because the TVPA uses the term "individual," it provides a right of action against only natural persons. *Id.* at 6a-10a. The court found that the "ordinary meaning" of *individual* "encompasses only natural persons and not corporations or other organizations," and further that the Dictionary Act "strongly implies" that the term *individual* "does not comprise organizations," because it defines "person" to include "'corporations, companies, associations, firms, partnerships, societies, . . . *as well as individuals*.'" *Id.* at 7a (quoting 1 U.S.C. 1 and adding emphasis).

The court of appeals rejected petitioners' contention that the TVPA, despite its different wording, should be construed *in pari materia* with the ATS, which petitioners contended allows actions against non-natural persons. Pet. App. 8a. Without considering whether the ATS permits such suits—a question now pending before this Court in *Kiobel*, *supra*—the court held that petitioners' argument is foreclosed by the TVPA's structure. The court explained that Section 2(a) of the TVPA uses the term *individual* five times; that four of those uses refer to the victim, who "could be only a natural person"; and that there is no reason to think the term "has a different meaning" in the fifth appearance, where it refers to "the perpetrator." *Id.* at 8a-9a. The court also noted that the TVPA uses the broader term *person* when referring to one "who may be a claimant in an action for wrongful death." *Id.* at 9a (quoting TVPA § 2(a)(2)). "[B]ecause a claimant could be a non-natural person, such as the decedent's estate," the court reasoned that the appearance of *person* "further supports the signifi-

cance" of Congress's use of *individual* to identify "who may be sued under the TVPA." *Ibid.*

Because neither respondent is a natural person, the court of appeals affirmed the dismissal of petitioners' TVPA claims against them. Pet. App. 10a-11a.

SUMMARY OF ARGUMENT

The TVPA limits liability under its right of action to "individual[s]" who torture or kill extrajudicially. TVPA § 2(a). As a result, non-natural persons are not liable.

A. 1. The ordinary meaning of "individual" is "a human being." In both common and legal usage, the term excludes non-natural persons. It thus differs from "person," which, as the Dictionary Act shows, is commonly used in federal statutes to include not only "individuals" but also entities like "corporations" and "associations." 1 U.S.C. 1.

2. The TVPA's structure reinforces the conclusion that Congress employed "individual" in its ordinary sense. The word appears five times in one sentence. TVPA § 2(a). Four are references to the victim of torture or extrajudicial killing, who must be a natural person. There is no basis for concluding that the fifth reference (to the perpetrator) reflects a shift to a definition that includes artificial persons.

The TVPA also uses the broader term "person" in making the perpetrator of an extrajudicial killing liable to "any person who may be a claimant" in a wrongful-death action. TVPA § 2(a)(2). Use of that distinct term indicates that a non-natural person may be a plaintiff in that limited category of cases and contrasts with the use of "individual" everywhere else in Section 2(a).

3. Other statutes show that when Congress establishes civil liability for both individuals and entities, it

does not use the term "individual." The same Congress that enacted the TVPA provided for civil suits about terrorism against "any person," which it defined as including both "individual[s]" and "entit[ies]." 18 U.S.C. 2331(3), 2333, 2334(a)-(b). By further providing that such actions could not be maintained against a "foreign state" or "agency of a foreign state," 18 U.S.C. 2337(2), Congress disproved petitioners' contention that it uses "individual" rather than "person" to include nongovernmental organizations and exclude only foreign states.

B. 1. The TVPA's legislative history shows no intention to establish liability for non-natural persons. The House Committee on Foreign Relations deliberately changed the text of the liability provision by substituting "individual" for "person," to "make it clear," in the words of one of the bill's three original sponsors, that "we are applying it to individuals and not to corporations." *House Hearing* 87-88. Petitioners rely (Br. 43) on later committee reports, which noted that use of the term "individual" precluded suits against "foreign states" and "their entities," but that observation is consistent with, and a logical consequence of, the use of "individual" to exclude all organizational entities, including nongovernmental ones.

2. Petitioners assert that Congress "[e]xpressly [a]ssume[d]" that "non-sovereign organizations would be subject to the TVPA," Br. 46, but most passages they identify in the legislative history referred to versions of the bill that used "person" rather than "individual." Although petitioners invoke (Br. 47-48) Congress's desire to respond to Judge Bork's concurring opinion in *Tel-Oren* v. *Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), cert. denied, 470 U.S. 1003 (1985), by providing an express cause of action that was lacking under the

ATS, that response was necessary for suits against natural persons as well, and therefore does not show that Congress sought to reach non-natural persons.

C. Petitioners advance several policy arguments, but none of them suffices to override the clear statutory text. Traditional principles of agency and tort law do not establish organizational liability here, because Congress expressly chose to make only "individual[s]" liable. While petitioners invoke several international agreements prohibiting torture, they do not speak to the meaning of the term "individual," and petitioners acknowledge, in any event, that those agreements do not require organizational liability in these circumstances.

Finally, that a corporation can be held liable in a federal-common-law action based on the ATS (as the United States has argued in *Kiobel* v. *Royal Dutch Petroleum Co.*, No. 10-1491) does not alter the appropriate result here. While there may be circumstances in which aliens could bring suit and U.S. citizens could not, such differences are unavoidable, because the TVPA is substantively and procedurally different from the ATS in several ways. This Court should not upset the policy balance reflected in the text of the TVPA.

ARGUMENT

BECAUSE THE TVPA MAKES ONLY "AN INDIVIDUAL" LIABLE, IT DOES NOT REACH NON-NATURAL PERSONS

A. The Text And Structure Of The TVPA Demonstrate That Only Natural Persons Are Liable

The TVPA creates a right of action against an "individual" who, under actual or apparent authority, or color of law, of a foreign nation, "subjects an individual" to

torture or extrajudicial killing. TVPA § 2(a).[2] Because the statute does not define "individual," the Court should "look first to the word's ordinary meaning." *Schindler Elevator Corp.* v. *United States ex rel. Kirk*, 131 S. Ct. 1885, 1891 (2011); see *Gross* v. *FBL Fin. Servs., Inc.*, 129 S. Ct. 2343, 2350 (2009) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.") (citation omitted).

1. The ordinary meaning of "individual" is "a human being"

a. In light of the statutory context—in which an individual subjects another individual to torture or extrajudicial killing—the applicable definition of the noun "individual" is "[a] human being, a person," used "[w]ithout any notion of contrast or relation to a class or group." 7 *Oxford English Dictionary* 880 (2d ed. 1989) (*OED*). The *OED* provides an illustrative quotation, especially apt here, from Samuel Johnson: "Only one individual was injured by another." *Ibid.* Other dictio-

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[2] Respondents have noted (Br. 10 n.7, 12 n.8) a potential alternative ground for affirming the judgment: that the torture and extrajudicial killing alleged here were not done "under actual or apparent authority, or color of law, of any foreign nation," TVPA § 2(a). The United States does not recognize respondents as being the government of a foreign state, but it does not believe that the Court should address (or has any need to address) that alternative ground. The issue was not addressed by the court of appeals. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). It is outside the scope of the question presented (Pet. Br. i), the Court did not accept respondents' suggestion (Br. in Opp. 15) to add the issue if it granted certiorari, and respondents do not press the issue in their merits brief. Moreover, unnecessary consideration of that issue could implicate sensitive foreign-policy interests of the United States.

naries contain materially identical definitions. See *American Heritage Dictionary* 893 (4th ed. 2006) ("A person."); *Random House Webster's Unabridged Dictionary* 974 (2d ed. 2001) ("a person"); *Webster's Third New International Dictionary* 1152 (1986) ("a particular person"); *Webster's New International Dictionary* 1267 (2d ed. 1958) ("A single human being; a person; primarily, a member of a human group or society, or of the human species").[3]

Petitioners seize instead (Br. 17-18) on a different set of definitions, which refer, in the *OED*'s phrasing, to "[a] single object or thing, or a group of things forming a single complex idea, and regarded as a unit; a single member of a natural class, collective group, or number." 7 *OED* 879. Petitioners quote only one of the *OED*'s examples of that usage, which is cryptic but does mention "a partnership, company, or corporation of traffickers" as "aggregate unit[s]" that might offer to sell stock. *Id.* at 880.[4] Another of the *OED*'s examples of that

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[3] The dictionaries also attest to a closely related definition of "individual": "a single human being as contrasted with a social group or institution." *Webster's Third New International Dictionary* at 1152. As the *American Heritage Dictionary* explains in a usage note (at 893), "there have been numerous objections to the use of the word to refer simply to 'person' where no larger contrast is implied," but that less-favored usage (the one advanced in the text above) is "common in official statements." (In federal statutes, it is common because Congress cannot safely use "person" when it means only "human being," see 1 U.S.C. 1.) In any event, the preferred usage (including the connotation of contrast) would be identical for purposes of this case, because it still involves "[a] single human" and not non-natural persons. *American Heritage Dictionary* at 893.

[4] The example petitioners quote (Br. 18) reads in full: "[The word 'Capital'] should be distinguished, first, as the aggregate saving of a community; next, as the stock which each individual possesses, and

usage refers to "herds of giraffes containing thirty individuals." *Ibid.* (brackets omitted).

Petitioners' dictionary definitions are not only inapposite but also inapplicable to their own theory about the TVPA. They explain (Br. 18) that their definitions emphasize "the *oneness* of something." They also contend (Br. 20) that Congress chose to use "individual" rather than "person" because it "more clearly excludes [foreign] states, but still encompasses other non-natural entities." That choice, however, could not be explained by petitioners' definitions, because respondents do not differ from foreign states in their degree of "oneness."

b. Consistent with the applicable definitions discussed above, legal usage commonly equates "individual" with "natural person." See *Black's Law Dictionary* 773 (6th ed. 1990) ("As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association[.]").[5] Thus, federal statutes routinely distinguish

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which he offers for sale or exchange. In the latter sense, it makes no practical difference whether the individual be a numerical unit, or an aggregate unit, as a partnership, company, or corporation of traffickers." James E. Thorold Rogers, *A Manual of Political Economy for Schools and Colleges* 53 (1868).

[5] *Black's Law Dictionary* added (at 773) that "it is said that th[e] restrictive signification [to natural persons] is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons." Except for the omission of citations to three state-court cases from 1849, 1852, and 1880, that definition had not changed since 1910. See Henry Campbell Black, *A Law Dictionary* 618 (2d ed. 1910). The relevant question here, however, is not whether "individual" could be understood, in highly unusual cases, to include an artificial person, but whether that is the term's "ordinary meaning." *Gross*, 129 S. Ct. at 2350. It is not, as shown by the statutes and cases discussed below.

between an "individual" and an organizational entity of one kind or another. See, *e.g.*, 8 U.S.C. 1101(b)(3) (defining "person," in the Immigration and Nationality Act, as "an individual or an organization"); 11 U.S.C. 101(31)(A)-(C) (defining "insider" differently for purposes of the Bankruptcy Code, depending on whether the debtor is an "individual," "corporation," or "partnership"); 46 U.S.C. 12507(d) ("If a person, not an individual, is involved in a violation of this chapter, the president or chief executive of the person also is subject to any penalty[.]").[6]

Of particular significance, that distinction is manifest in the Dictionary Act, which generally defines "person" and "whoever" to "include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, *as well as* individuals." 1 U.S.C. 1 (emphasis added). Petitioners suggest (Br. 23) that the Dictionary Act indicates that "individual" encompasses organizations because some of the terms in the "definition of 'person' obviously overlap to a substantial degree." But pe-

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[6] See also, *e.g.*, 2 U.S.C. 622(8)(A)(ii) (defining "government-sponsored enterprise" as corporate entity that is "owned by private entities or individuals"); 7 U.S.C. 138 (defining "laboratory" as "any facility or vehicle that is owned by an individual or a public or private entity"); 12 U.S.C. 1832(a) (authorizing banks to establish certain accounts "held by one or more individuals or by an organization * * * which is not operated for profit"); 18 U.S.C. 1961(3) (defining "person" as "any individual or entity capable of holding a legal or beneficial interest in property"); 18 U.S.C. 2331(3) (same); 21 U.S.C. 1907(5) (defining "person" as "an individual or entity"); 30 U.S.C. 1403(14) (defining "United States citizen" to include "any individual who is a citizen of the United States" and "any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States"); 51 U.S.C. 50902(1) (Supp. IV 2010) (defining U.S. citizen as "an individual" or "an entity").

titioners fail to appreciate that the definition adds a group of potentially overlapping categories of artificial persons to a baseline of natural persons (*i.e.*, "individuals"), which, notably, is set off from the list of artificial persons by the phrase "as well as," indicating that it differs in kind.

c. This Court's opinions also regularly distinguish between "individuals" and organizations, without pausing to explain or justify the Court's evident understanding that an individual is a natural—and not an artificial—person. See, *e.g.*, *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 131 S. Ct. 2846, 2853-2854 (2011) ("For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home."); *FCC* v. *AT&T Inc.*, 131 S. Ct. 1177, 1182 (2011) ("'Personal' ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities."); *Citizens United* v. *FEC*, 130 S. Ct. 876, 900 (2010) ("Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas[.]") (citation omitted); *Braswell* v. *United States*, 487 U.S. 99, 104 (1988) ("[F]or purposes of the Fifth Amendment, corporations and other collective entities are treated differently from individuals.").

d. Petitioners invoke *Clinton* v. *City of New York*, 524 U.S. 417 (1998), as evidence that, despite the foregoing, the term "individual" may "encompass artificial entities." Pet. Br. 19. But that decision gives petitioners little support. *Clinton* held that the Line Item Veto

Act's provision for expedited judicial review at the behest of "[a]ny Member of Congress or any individual adversely affected," 2 U.S.C. 692(a)(1) (Supp. II 1996), applied to cases brought by "natural persons" or "corporate persons." 524 U.S. at 428-429. In doing so, the Court recognized that its interpretation was inconsistent with "ordinary usage" and with the usual "meaning in the law," and that it was compelled only because a narrower reading "would produce an absurd result." *Id.* at 428 n.13, 429 n.14. Cf. *id.* at 454 (Scalia, J., concurring in part and dissenting in part) ("With the exception of [one] natural person, the appellees—corporations, cooperatives, and governmental entities—are not 'individuals' under any accepted usage of that term.").

Petitioners do not—and could not plausibly—contend that it would be "absurd" to construe the TVPA as applying only to natural persons. Congress could reasonably have decided that, as discussed below, TVPA suits should be brought only against natural persons. Accordingly, *Clinton* cannot justify petitioners' departure from ordinary meaning.

e. The lower-court decisions that petitioners cite (Br. 19-20) for the rare instances in which federal statutes using "individual" have been construed as applying to non-natural persons are no more helpful to them. In *United States* v. *Middleton*, 231 F.3d 1207 (2000), the Ninth Circuit construed "individual" as including corporations to avoid an absurd result. *Id.* at 1211. *United States* v. *Perry*, 479 F.3d 885 (D.C. Cir. 2007), involved the same provision and followed *Middleton*, but it also allowed "individuals" to include "governmental agencies" (there, the EPA). *Id.* at 893 n.7, 894 n.10. *Perry* thus contravenes petitioners' principal contention: that

the TVPA used "individual" rather than "person" in order to "exclude sovereign entities." Pet. Br. 22.

Petitioners suggest that courts have "uniformly" construed a reference to "individual" in former 11 U.S.C. 362(h) (2000)—now found at 11 U.S.C. 362(k)(1)—as including not just natural persons but also corporate debtors. Pet. Br. 20 (quoting *In re Atlantic Bus. & Cmty. Corp.*, 901 F.2d 325, 329 (3d Cir. 1990)). In fact, however, all five circuits to have considered the question since 1990 have rejected that interpretation. See *In re Spookyworld, Inc.*, 346 F.3d 1, 7-8 & n.3 (1st Cir. 2003) (citing cases).

2. The TVPA's structure confirms that Congress did not intend to make organizations liable

Two aspects of the TVPA's structure demonstrate that, consistent with the Dictionary Act, Congress employed the ordinary meaning of "individual" in the TVPA and intended to create a statutory right of action against natural persons but not organizations.

a. First, as the court of appeals observed, "[t]he liability provision of the [TVPA] uses the word 'individual' five times in the same sentence—four times to refer to the victim of torture or extrajudicial killing, which could be only a natural person, and once to the perpetrator." Pet. App. 8a-9a. Of course, the "normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning." *Commissioner* v. *Lundy*, 516 U.S. 235, 250 (1996) (citation omitted). And that presumption is "surely at its most vigorous when a term is repeated within a given sentence." *Brown* v. *Gardner*, 513 U.S. 115, 118 (1994). Here, the TVPA indisputably uses the "human being" definition of "individual" in the four in-

stances where it refers to the victim, and there is no basis for concluding that the fifth instance reflects a switch to petitioners' obscure definitions referring to an "object," "thing," or "group."

In responding to the court of appeals' analysis on this point, petitioners cite provisions where "the same word" identifies both an offender and a victim. Pet. Br. 27-28 (discussing 8 U.S.C. 1101(b)(3) and 1324; 18 U.S.C. 229A and 229F; 33 U.S.C. 1319(c)(3)(A); and 42 U.S.C. 7413(c)). But the relevant word in every one of petitioners' examples is "person," which ordinarily includes both natural persons and organizations (1 U.S.C. 1) and is specifically defined in one of petitioners' examples as including "an individual or an organization" (8 U.S.C. 1101(b)(3)).

As petitioners note (Br. 27), the canon that identical words should be given the same meaning in different parts of a statute is not absolute. The Court departs from it when "there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *General Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 595 (2004) (citation omitted); see *Environmental Def.* v. *Duke Energy Corp.*, 549 U.S. 561, 573-576 (2007) (holding that EPA could reasonably regulate "modifications" differently under two pollution-control schemes in the Clean Air Act, given differing purposes of those two schemes). The five appearances of the word "individual" in one sentence of the TVPA, however, are not in "different parts" of the statute, and they do not reflect differences in intent or purpose.

b. A second attribute of the TVPA's liability provision provides strong confirmation that Congress in-

tended for "individual" to bear its ordinary meaning. In addressing the extrajudicial killing of "an individual," the statute provides for the perpetrators to be liable "to the individual's legal representative, or to any *person* who may be a claimant in an action for wrongful death." TVPA § 2(a)(2) (emphasis added). That disparate use of "individual" and "person" in adjacent clauses should be given effect, not disregarded. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983).

The court of appeals concluded that the shift within that sentence from "individual" to "person" would allow for a wrongful-death claim brought by "a non-natural person, such as the decedent's estate." Pet. App. 9a. Petitioners contend (Br. 29) that the court of appeals erred, because "[t]he only legitimate claimants other than legal representatives of the deceased in wrongful death actions are natural persons—namely, relatives of the deceased." But petitioners themselves are mistaken.

As the Restatement comment that they cite acknowledges, "[d]eath statutes vary in form and purpose." Restatement (Second) of Torts § 493 cmt. a (1979). Contrary to petitioners' assertion, it is not always true that "an estate itself cannot be a claimant" (Br. 29) in a wrongful-death action. For example, the civil action authorized by 18 U.S.C. 2333(a) may be brought by the victim or by "his or her estate, survivors, or heirs." And the Mississippi Supreme Court has rejected the view that "a wrongful death action belongs solely to the heirs of the deceased," because Mississippi's wrongful-death statute permits suit by family members as well as by "the estate of the decedent, an insurance company exercising its right of subrogation, and any other parties claiming a right of recovery." *Cleveland* v. *Mann*, 942 So. 2d 108, 118 (2006) (en banc).

Moreover, routine processes of subrogation and assignment also allow non-natural persons to bring wrongful-death suits. This Court long ago held that, when an employer had paid compensation to a deceased worker's relative under what is now known as the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, and the relative had not pursued a wrongful-death claim against a third-party tortfeasor, the Act assigned the relative's interest in that claim to the employer, who could therefore seek "the full recovery provided by the wrongful death act" and could do so by filing in the employer's own name (rather than the relative's). *Aetna Life Ins. Co.* v. *Moses*, 287 U.S. 530, 539-542 (1933). See 33 U.S.C. 933(b) (current assignment provision); *Rodriguez* v. *Compass Shipping Co.*, 451 U.S. 596, 603 (1981) (an "assignment * * * transfers the * * * entire right to commence a third-party action to the employer"). The details vary, but similar assignment or subrogation procedures are available under workers' compensation laws in many States. See Gary L. Wickert, *Workers' Compensation Subrogation in All 50 States* §§ 2.1-2.2, at 8-11 (4th ed. 2009). Thus, if an extrajudicial killing occurred in a U.S. harbor or in a place of employment subject to state or federal workers' compensation laws, an employer or insurer that paid death benefits to a decedent's relatives might be able to bring a wrongful-death claim as an assignee or subrogee. See also Resp. Br. 27.

Accordingly, "[t]here is strong reason to believe that Congress intended the differences that its language suggests," *Burlington N. & Santa Fe Ry.* v. *White*, 548 U.S. 53, 63 (2006), and its decision to permit an "individual" or "person" to bring suit only against "[a]n individual" should be respected. Petitioners' reading of Section

2(a), by contrast, is starkly inconsistent with ordinary principles of statutory construction. They read the statute's reference to "person" as including *only* natural persons, and one of its references to "individual" as including both natural and non-natural persons—exactly the opposite of the normal relationship between those two terms in legal usage. See *Clinton*, 524 U.S. at 428 n.13. Moreover, because four appearances of "individual" in Section 2(a) concededly apply *only* to natural persons, there would, in petitioners' view, be no reason for Congress to have used the term "person" in the one place it appears (rather than repeating "individual").

3. Congress does not use "individual" when it intends to subject organizations to liability

Other statutes further demonstrate that Congress does not use "individual" to establish organizational liability.

That is perhaps best reflected in a statute enacted in October 1992, just seven months after the TVPA became law. In amending criminal provisions first added by the Antiterrorism Act of 1990, the 102d Congress established a cause of action and jurisdiction for a civil remedy for "[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs." Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 1003(a)(4), 106 Stat. 4522 (1992) (18 U.S.C. 2333(a)). The venue provision specified that "[a]ny civil action under section 2333" could be instituted "against any person," 18 U.S.C. 2334(a), and the statute specifically defined "person" as "any individual *or entity* capable of holding a legal or beneficial interest in property." 18 U.S.C. 2331(3) (emphasis added).

There is thus no doubt that the 102d Congress understood—in the specific context of deciding who could be a defendant in a civil tort action—that "individual" did not already include an "entity," but that it could still establish organizational liability by using a broader term.

The 102d Congress's amendments to the Antiterrorism Act also refute petitioners' contention that Congress uses the term "individual" when it wishes to exclude governments, but not other entities, from liability. Having provided that civil suits for terrorist acts could be brought against "any person" (including both "individual[s]" and "entit[ies]"), 18 U.S.C. 2331(3), 2333(a), 2334(a)-(b), Congress added a separate provision to specify further that such actions could not be maintained against "a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority." 18 U.S.C. 2337(2).

Following that model—using a term broad enough to include entities but carving out governmental ones—would have been a far clearer, and more direct, way to achieve the result petitioners seek here. That Congress felt it necessary to use that mechanism a few months after it enacted the TVPA strongly indicates that it did not think that simply using the term *individual* would suffice to include nongovernmental organizations and simultaneously to exclude governmental ones.

By the same token, Congress's decision to employ materially different language to identify potential defendants under the TVPA and the Antiterrorism Act exposes a basic flaw in petitioners' claim (Br. 30-32) that those statutes should be construed *in pari materia*. The same thing is true of petitioners' other two "federal stat-

utes that provide civil remedies to American citizens who suffer torture or extrajudicial killing." Pet. Br. 30. Unlike the TVPA, they use terms that ordinarily denote organizations. See 28 U.S.C. 1603(a), 1605A(c) (2006 & Supp. II 2008) (terrorism exception to the Foreign Sovereign Immunities Act, applying to a "foreign state," which includes an "agency or instrumentality"); 42 U.S.C. 1983 (applying to "[e]very person" who subjects another to a violation of federal rights). So do all of the other "federal statutes that create tort actions" that petitioners identify. Br. 14.[7]

There is accordingly no reason to conclude that the TVPA reflects anything other than the ordinary meaning of "individual," which is limited to natural persons.

B. The Legislative History Shows That Congress Did Not Intend To Establish Liability For Non-Natural Persons

"[R]eliance on legislative history is unnecessary in light of the statute's unambiguous language." *Milavetz, Gallop & Milavetz, P.A.* v. *United States*, 130 S. Ct. 1324, 1332 n.3 (2010). Nevertheless, the evolution of the statutory text that became the TVPA shows that its drafters deliberately changed "person" to "individual," and that they did so to avoid establishing liability for non-natural persons. The legislative history does not support petitioners' attempt to characterize that change as merely drawing a distinction between governmental and nongovernmental organizations.

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[7] See 15 U.S.C. 1692e, 1692k ("debt collector"); 15 U.S.C. 1692a(6) (defining "debt collector" as "any person" who does certain things); 42 U.S.C 1985 ("person"); 46 U.S.C. 30302 ("person or vessel"); 46 U.S.C. 30104 (Jones Act) ("employer"); *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U.S. 783, 791 (1949) (interpreting "employer" under the Jones Act as "one person, firm, or corporation").

1. The TVPA's drafters deliberately changed "person" to "individual" to limit liability to human beings

a. As explained above (pp. 3-4, *supra*), when the TVPA was introduced in the 100th Congress, it would have established that "[e]very person" who, under color of foreign law, subjects "any person" to torture or extrajudicial killing would be liable to "the party injured or that party's legal representative." *House Hearing* 82. During the markup session of the House Foreign Affairs Committee, however, Representative Leach, one of the bill's three original sponsors (*id.* at 1, 81), proposed that the text be amended to provide "a precise definition of person to make it clear we are applying it to individuals and not to corporations." *Id.* at 87. After a colloquy with the Committee's legislative counsel—who explained that the amendment would be "fairly simple" and could be accomplished by "changing the word[] 'person' to 'individual[]' in several places in the bill"—the proposed amendment was unanimously adopted. *Id.* at 87-88. The version of the bill reported out of the Foreign Affairs Committee (and later out of the House Judiciary Committee) reflected the substitution of "individual" for "person" in the liability provision. *Id.* at 88 n.1, 111; H.R. Rep. No. 693, 100th Cong., 2d Sess. Pt. 1, at 1 (1988). That bill passed the House during the 100th Congress, as did a materially identical version in the 101st Congress, and the materially identical version enacted by the 102d Congress. See H.R. Rep. No. 367, 102d Cong., 1st Sess. Pt. 1, at 6 (1991) (*1991 House Report*).

b. Petitioners dismiss the markup session's real-time account of how the operative text of the TVPA came to be, because, they say, only committee reports reflect the understanding of those "involved in drafting

and studying proposed legislation." Br. 44 (quoting *Eldred* v. *Ashcroft*, 537 U.S. 186, 209 n.16 (2003)). But that rationale is inapplicable here. Unlike a floor statement from a single member during a debate, the markup session plainly does reflect the understanding of the TVPA's drafters, because the amendment came at the request of one of the bill's three original sponsors, and it unanimously passed the committee in the presence of another one of the original sponsors (Rep. Yatron). *House Hearing* 1, 88.

c. In any event, the statements from committee reports on which petitioners principally rely (Br. 43) are consistent with the drafters' evident desire during the markup session to avoid imposing liability on nonnatural persons. The Senate Judiciary Committee's report stated that "[t]he legislation uses the term 'individual' to make crystal clear that foreign states or their entities cannot be sued under this bill under any circumstances: only individuals may be sued." S. Rep. No. 249, 102d Cong., 1st Sess. 7 (1991) (*Senate Report*). That statement—which assumes that the term "individual" would reasonably *exclude* foreign-state "entities" but contains no affirmative indication that it would somehow *include* nongovernmental entities—is entirely consistent with the House drafters' explanation that corporations would not be covered.[8]

The legislative history therefore gives no reason to doubt that, if Congress had intended to reach nongov-

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[8] Petitioners contend that the House report "makes the same point," Br. 43, but that report points out that "[o]nly 'individuals,' not foreign states, can be sued under the bill." *1991 House Report* 4. Unlike the Senate report, that statement does not even suggest that excluding foreign states was one reason for, as opposed to simply a logical consequence of, the statute's reference to "individual."

ernmental organizations with the TVPA's liability provision, it would have used a term broader than "individual," as it did in the Antiterrorism Act (see pp. 19-20, *supra*).[9]

2. The legislative history does not affirmatively indicate that organizations would be liable

Petitioners contend that other parts of the legislative history "[e]xpressly [a]ssume[]" that "non-sovereign organizations would be subject to the TVPA." Br. 46. But the statements they cite are inapposite.

a. Petitioners first contend that Congress necessarily "understood the Act to apply to organizations such as the PLO," Br. 47-48, because the TVPA responded to *Tel-Oren* v. *Libyan Arab Republic*, 726 F.2d 774 (1984), cert. denied, 470 U.S. 1003 (1985), in which the D.C. Circuit held that an ATS suit could not proceed against, *inter alia*, the PLO (see p. 2, *supra*). But it is too simplistic to claim that "the TVPA was intended to facilitate suits similar to" *Tel-Oren*. Pet. Br. 46. The committee reports indicate that Congress did indeed want to provide the "explicit grant of a cause of action" that Judge Bork had found wanting under the ATS. *1991 House Report* 4; see *Senate Report* 4-5. Providing that right of action, however, would have been equally necessary for suits against natural persons. See *Tel-Oren*, 726 F.2d at 804-805 (Bork, J., concurring). Moreover, because the

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[9] At one point in discussing the TVPA's color-of-law requirement, the Senate report notes that "this legislation does not cover purely private criminal acts by individuals *or nongovernmental organizations*." *Senate Report* 8 (emphasis added). But the addition of "nongovernmental organizations" to "individuals" indicates that the Judiciary Committee did not share petitioners' assumption that the term "individual" includes nongovernmental organizations.

TVPA reaches only conduct "under actual or apparent authority, or color of law, of any foreign nation," TVPA § 2(a), Congress did not reverse Judge Edwards's opinion in *Tel-Oren* by establishing liability for entities that were not recognized as state actors. See 726 F.3d at 791 (finding that the PLO had not engaged in "official or state-initiated torture").

b. Petitioners contend that their counter-textual reading of Congress's response to *Tel-Oren* is "confirm[ed]" by statements from "Senator Specter and others." Br. 48 & n.13. But the statements they cite were made during the Senate hearing, where two bills were under consideration: H.R. 1662, which used "individual," and S. 1629, which used "person." *The Torture Victim Protection Act of 1989: Hearing Before the Subcomm. on Immigration and Refugee Affairs of the S. Comm. on the Judiciary*, 101st Cong., 2d Sess. 2, 5 (1990) (*Senate Hearing*). To the extent Senator Specter "suggested" (Pet. Br. 48 n.13) that the TVPA would provide relief against the *Tel-Oren* defendants, he was presumably talking about the Senate bill, which he had introduced (*Senate Hearing* 2) but which was never enacted. And the testimony of Father Robert Drinan that petitioners quote (Br. 48 n.13) specified that someone had told him that "if *Senate bill 1629, this bill*, had been the law, the result in *Tel-Oren* would have been different." *Senate Hearing* 66 (emphasis added).

Notably, Father Drinan did not directly endorse that position on the merits, and it would be surprising if he had. When he testified in the House of Representatives on behalf of the American Bar Association, he was asked whether the TVPA should, in addition to addressing torture undertaken under color of governmental authority, have "another definition for including organizations like

the PLO." *House Hearing* 74. In response, he said: "I think that we should exclude non-governmental organizations. * * * I think it would be best to stay with that and just avoid all of the problems about the PLO and related groups." *Ibid.*; see also *ibid.* (similar sentiments expressed by Michael H. Posner, testifying for the Lawyers Committee for Human Rights). Father Drinan was not discussing the distinction between "person" and "individual," because the House bill had not yet been amended in that way, but his response did not assume that the TVPA would overrule *Tel-Oren* so sweepingly that the PLO would be liable.

c. For similar reasons, petitioners err in relying (Br. 49) on the following statement by a State Department Assistant Legal Adviser: "We understand that under *either version of the Act*, the prospective defendant must be found in the United States or otherwise submit himself (or *itself*) to U.S. jurisdiction." *Senate Hearing* 28-29 (emphases added). Petitioners contend that "the parenthetical using the word 'itself' can refer only to an organizational defendant." Br. 49. But the parenthetical is best understood as accommodating the variation between the Senate and House versions of the bill, without indicating any expectation that organizational defendants would be encompassed by "individual."

Nevertheless, if petitioners are willing to parse pronouns for such inferences, their position is refuted by other statements. After the Senate bill he sponsored had been amended to use "individual" rather than "person," Senator Specter explained that "[i]f a torturer does not come to the United States and establish sufficient contacts, then *he or she* cannot be sued under this act." 138 Cong. Rec. 4176 (1992) (emphasis added); see also 135 Cong. Rec. 22,715 (1989) (statement of Rep.

Morrison) (explaining TVPA would apply "only when the perpetrator seeks the protection of our shores or otherwise subjects *himself* to the personal jurisdiction of a U.S. court") (emphasis added).

d. The legislative history thus confirms what is evident from the TVPA's text and structure. At the very least, it does not unambiguously support petitioners' position. That alone should be fatal to their argument, as the Court does not "allow[] ambiguous legislative history to muddy clear statutory language." *Milner* v. *Department of the Navy*, 131 S. Ct. 1259, 1266 (2011).

C. Policy Concerns Do Not Override The Statutory Text

Despite the TVPA's plain language and internal structure, the contemporaneous indications that Congress does not use "individual" to create organizational liability, and the legislative history's showing that the TVPA's drafters deliberately chose the term "individual" to avoid imposing liability on non-natural persons, petitioners nevertheless suggest (Br. 24) that the term "individual" is ambiguous in light of background principles they infer from general policy objectives and, more specifically, from the ATS. This Court should reject petitioners' "attempt to create ambiguity where the statute's text and structure suggest none." *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 227 (2008). In any event, the policy objectives and statutes that petitioners invoke do not call into doubt the conclusion that the TVPA reaches only natural persons.

1. Petitioners contend that the Court should derive organizational liability under the TVPA from the "background of ordinary tort-related . . . liability rules." Br. 12 (quoting *Meyer* v. *Holley*, 537 U.S. 280, 285 (2003)); see also Pet. Br. 16-17, 26. Background tort

principles, however, become relevant when Congress creates a statutory tort and fails to address some aspect of the suit. See *Meyer*, 537 U.S. at 286 ("Congress' silence * * * permit[s] an inference that Congress intended to apply ordinary background tort principles.") (emphasis omitted). Here, Congress was not silent about who could be held liable. It expressly limited liability to "[a]n individual," TVPA § 2(a), when the ordinary meaning of that word denotes natural persons, and against a statutory background in which it uses "person," or another term including organizational entities, to establish liability for non-natural persons. See pp. 8-21, *supra*.

2. Petitioners also contend that the TVPA itself invokes "traditional agency principles, including organizational liability," because it makes liable any individual who "'subjects'" a victim to torture or extrajudicial killing. Br. 25 (quoting TVPA § 2(a)). It is true that *an individual* may, in appropriate circumstances, be liable under the TVPA for subjecting another to such acts, even if he does not personally deliver the blows. Yet it does not follow that Congress established liability for *any* principal—including an organization—on whose behalf a torturer acts, because the statute permits only "[a]n individual" to "be liable" (TVPA § 2(a)(1) and (2)). An officer who gives an order to kill or torture is an "individual," but an organization is not.

For similar reasons, petitioners' insistence (Br. 39, 41, 49) that the activities of "death squads" are within the TVPA's contemplation is beside the point. The TVPA addressed death squads by creating a right of action against their individual members. And, even in the Eleventh Circuit (the only circuit that permits TVPA suits against non-natural persons), cases about death-

squad activities have been brought against individuals, not organizations. See *Cabello* v. *Fernández-Larios*, 402 F.3d 1148, 1152-1153 & n.1 (11th Cir. 2005) (suit against former Chilean military officer for role in murder committed by "Caravan of Death"); see also *Chavez* v. *Carranza*, 413 F. Supp. 2d 891, 900 (W.D. Tenn. 2005) (suit, in relevant part, against El Salvador's former Subsecretary of Defense and Public Security, for murders committed by death squads); *Doe* v. *Rafael Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004) (suit against former Salvadoran military officer who was chief of security for death squads).[10]

3. Petitioners further contend (Br. 34-37) that "individual" should be construed in light of international agreements prohibiting torture and extrajudicial killing. The TVPA, however, did not define "individual" in a manner "virtually identical," *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 437 (1987), to any term or definition in those agreements (which do not distinguish, in their definitions, between natural and juridical actors, see U.S. Amicus Br. at 20-21, *Kiobel* v. *Royal Dutch Petroleum Co.*, No. 10-1491 (filed Dec. 21, 2011) (U.S. *Kiobel* Br.)). The agreements therefore furnish little guidance about what the term means in the TVPA.

Moreover, petitioners appropriately refrain from arguing that applying the ordinary meaning of "individual" in the TVPA would put the United States in viola-

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[10] Other suits against Salvadoran officers have involved allegations about the acts of military or police personnel in units often associated with death squads, without necessarily specifying death squads' direct involvement. See, *e.g.*, *Chavez* v. *Carranza*, 559 F.3d 486 (6th Cir.), cert. denied, 130 S. Ct. 110 (2009); *Arce* v. *Garcia*, 434 F.3d 1254, 1256 (11th Cir. 2006).

tion of those agreements. See Pet. Br. 34.[11] There is, accordingly, no occasion to apply the canon that Acts of Congress should be construed to avoid conflict with international law. See *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

4. Finally, petitioners contend (Br. 33-34, 50), that the TVPA should be construed to apply to organizations because Congress enacted it in part to supplement and expand upon aliens' statutory right of action under the ATS, under which (they contend) organizations can be held liable. Pet. Br. 33-34, 50. The United States agrees that corporations can be held liable in a suit based on the ATS. See U.S. *Kiobel* Br. at 12-31. But critical differences between the two statutes prevent the answer from being the same with respect to the TVPA.

While the ATS expressly limits the class of potential ATS plaintiffs to "alien[s]," 28 U.S.C. 1350, it "does not distinguish among classes of defendants." *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 438 (1989). It is silent about what defendants may be sued, and "at the time of [its] enactment * * * enabled federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law." *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 712 (2004). It is therefore appropriate to apply back-

[11] Also, although Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. 19 (1988), 1465 U.N.T.S. 85, requires States Parties to provide civil remedies for victims of torture, when the Senate gave its advice and consent to the CAT, it was subject to an "understanding" that Article 14 applies only to "acts of torture committed in territory under the jurisdiction of that State Party." 136 Cong. Rec. 36,198 (1990). The TVPA applies to torture under color of foreign law, which would typically occur outside the United States' jurisdiction.

ground principles of tort liability in defining the class of defendants where a federal-common-law cause of action may otherwise be created on the basis of the ATS. See U.S. *Kiobel* Br. 22-27. The TVPA, by contrast, specifies that only "[a]n individual" will "be liable for damages." TVPA § 2(a). Accordingly, courts are not free to apply background principles of tort liability to extend the TVPA's coverage to defendants that are not "individuals."

Petitioners contend (Br. 50) that Congress could not have intended to permit aliens to bring suits against corporations where a federal-common-law cause of action is created under the ATS and deny similar latitude to U.S. citizens under the TVPA. While the TVPA was intended to "supplement[]" the ATS (*Sosa*, 542 U.S. at 731), the two statutes differ in several ways, and substantive and procedural disparities between actions brought by U.S. citizens and by aliens can arise wherever the two statutes diverge. For instance, an alien may bring a suit under the ATS arising from an act of piracy, but a U.S. citizen may bring no such suit under either the ATS or the TVPA, because the former does not permit suits by U.S. citizens, and the latter does not encompass piracy. The TVPA also imposes two express procedural limitations that the text of the ATS itself does not: a ten-year statute of limitations and a requirement that the plaintiff exhaust remedies before filing suit. TVPA § 2(b) and (c). And Congress did not intend that the TVPA's establishment of a right of action for torture or extrajudicial killing would resolve whether or in what circumstances violations of other substantive

norms might be actionable under the ATS. See *Senate Report* 5; *1991 House Report* 3.[12]

This Court should not upset the policy balance reflected in Congress's decision to enact what the TVPA's proponents acknowledged was a "narrowly crafted bill which is designed to deal with one aspect of the problem," *House Hearing* 74 (testimony of Michael H. Posner); see also Resp. Br. 41 n.16 (quoting Senators' floor statements). Cf. *Bowen* v. *Owens*, 476 U.S. 340, 347 (1986) ("This Court consistently has recognized that in addressing complex problems a legislature may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.") (internal quotation marks omitted).

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[12] Some aspects of the relationship between the ATS and the TVPA remain unsettled. The lower courts have divided over whether the TVPA displaces any federal-common-law cause of action for torture or extrajudicial killing that might otherwise be created under the ATS. Compare, *e.g.*, *Enahoro* v. *Abubakar*, 408 F.3d 877, 884-886 (7th Cir. 2005) (holding that TVPA has "occup[ied] the field" for law-of-nations claims involving torture or extrajudicial killings), cert. denied, 546 U.S. 1175 (2006), with *Aldana* v. *Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1250-1251 (11th Cir. 2005) ("Plaintiffs can raise separate claims for state-sponsored torture under the [ATS] and also under the [TVPA]."), cert. denied, 549 U.S. 1032 (2006). That issue is beyond the scope of the question presented in this case, and respondents agree (Br. 47) that it need not be addressed here. It was squarely presented in the conditional cross-petition in *Kiobel*, but the Court denied certiorari. See Pet. at i, *Shell Petroleum N.V.* v. *Kiobel*, 132 S. Ct. 248 (2011) (No. 11-63).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. The Torture Victim Protection Act of 1991, 28 U.S.C. 1350 note, provides:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Torture Victim Protection Act of 1991'.

"SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

"(a) LIABILITY.—An individual who, under actual or apparent authority, or color of law, of any foreign nation—

"(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

"(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

"(b) EXHAUSTION OF REMEDIES.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

"(c) STATUTE OF LIMITATIONS.—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

"SEC. 3. DEFINITIONS.

"(a) EXTRAJUDICIAL KILLING.—For the purposes of this Act, the term 'extrajudicial killing' means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the

judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

"(b) TORTURE.—For the purposes of this Act—

"(1) the term 'torture' means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

"(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—

"(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

"(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

"(C) the threat of imminent death; or

"(D) the threat that another individual will imminently be subjected to death, severe physical

pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."

2. 1 U.S.C. 1, provides in pertinent part:

Words denoting number , gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

* * * * *

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

* * * * *

3. 18 U.S.C. 2331 provides in pertinent part:

Definitions

As used in this chapter—

* * * * *

(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property;

* * * * *

4. 18 U.S.C. 2333 provides in pertinent part:

Civil remedies

(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

* * * * *

5. 18 U.S.C. 2334 provides in pertinent part:

Jurisdiction and venue

(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

* * * * *

6. 18 U.S.C. 2337 provides:

Suits against Government officials

No action shall be maintained under section 2333 of this title against—

(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his or her official capacity or under color of legal authority; or

(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.